

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2001-448-C - ORDER NO. 2002-829
DECEMBER 10, 2002

IN RE: Application of BAK Communications, LLC)	ORDER APPROVING
for a Certificate of Public Convenience and)	CERTIFICATE FOR
Necessity to Operate as a Reseller of)	LONG DISTANCE
Intrastate Interexchange Telecommunications)	AUTHORITY, <i>va</i>
Services within the State of South Carolina,)	MODIFIED
for Alternative Regulation, and for Approval)	ALTERNATIVE
of Transfer of Assets and Customer Base)	REGULATION, AND
from Voice Vision International, Inc.)	ASSET TRANSFER

This matter comes before the Public Service Commission of South Carolina (the "Commission") by way of the Application of BAK Communications, LLC ("BAK" or the "Company") requesting a Certificate of Public Convenience and Necessity authorizing it to provide resold interexchange telecommunications services within the State of South Carolina. BAK also requested authority to acquire the assets and customers of Voice Visions International, Inc. ("VVI") Further, BAK requests that the Commission regulate BAK's long distance business services, including consumer card services, operator services and private line service offerings in accordance with the principles and procedures established for relaxed regulation in Orders Nos. 95-1734 and 96-55 in Docket No. 95-661-C, as modified by Order No. 2001-997 in Docket No. 2000-407-C (now known as "modified alternative regulation").

The Commission's Executive Director instructed BAK to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the areas affected by the scope of the application. The purpose of the Notice of Filing was to inform interested parties of BAK's application and of the manner and time in which to file the appropriate pleadings for participation in the proceedings. BAK complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. No Petitions to Intervene or letter of protests regarding BAK's application were received by the Commission.

A hearing was convened on April 3, 2002, at 11:30 a.m. in the Commission's Hearing Room at 101 Executive Center Drive, Columbia, South Carolina. The Honorable William Saunders presided. BAK was represented by Scott Elliott, Esquire. Florence P. Belser, Deputy General Counsel, represented the Commission Staff.

William J. Nolan, III, Chief Financial Officer of BAK, appeared and testified in support of the application. According to Mr. Nolan, BAK seeks authority to operate as a reseller of intraLATA and interLATA intrastate telecommunications services on a statewide basis. BAK intends to engage in "switchless" resale, and BAK will arrange for the traffic of its subscribers to be routed directly over the networks of BAK's underlying providers. BAK seeks authority to offer on a resale basis within South Carolina intrastate, interLATA services and, to the extent authorized by the Commission, interstate, intraLATA services such as 1+ service, flat rate service, 800 inbound service, and travel cards and prepaid calling cards. BAK principally will provide services through use of prepaid phone cards.

According to Mr. Nolan, BAK is a Limited Liability Company organized under the laws of the State of California. On October 11, 2001, BAK was issued, by the South Carolina Secretary of State, a Certificate of Authority to transact business in the State of South Carolina.

Mr. Nolan testified that BAK will offer interexchange services exclusively on a resold basis. According to Mr. Nolan, BAK has no plans to construct any telecommunications transmission facilities of its own and seeks no construction authority. BAK utilizes Global Crossing, Qwest, and Sprint as underlying long distance carriers. Mr. Nolan affirmed that BAK would only use carriers properly certified by the Commission for the provision of its services. BAK will be relying on the technical network capabilities of its underlying carriers for all network and transport facilities in the provision of BAK's interexchange services.

According to Mr. Nolan, BAK has sufficient technical, financial, and managerial resources and ability to provide the telecommunications services for which authority is sought. Mr. Nolan offered that BAK's professional staff is qualified to support BAK's telecommunications services offerings. A review of the biographical information accompanying the application reveals that BAK's member/managers each possess significant business experience. Further, according to Mr. Nolan, BAK's personnel represent a broad spectrum of business and technical disciplines, possessing many years of individual and aggregate telecommunications experience.

With regard to the financial qualifications, BAK submitted unaudited financial information as of September 21, 2001. BAK's financial information indicates a strong

cash position and is reflective of a company in the beginning, or "start-up," phase of business.

As to technical qualifications to provide the requested services, Mr. Nolan noted that BAK is certified in thirty-six states and the District of Columbia. Further, Mr. Nolan described BAK's customer service operations. In addition, BAK will utilize the technical expertise of its underlying carriers.

With regard to BAK's requested acquisition of assets, Mr. Nolan explained that BAK was acquiring the assets and customers of VVI. VVI filed for Chapter 11 bankruptcy protection, and VVI had filed a motion with the United States Bankruptcy Court, Central District of California, under which BAK would purchase substantially all of VVI's assets, including VVI's customer base. (VVI's Motion to the Bankruptcy Court is attached to BAK's application.) As a late-filed exhibit, BAK provided a copy of the Bankruptcy Court's Order which approved the sale of VVI's assets, including customer base, to BAK.

BAK indicates a desire to have its long distance business services, including consumer card services, operator services, and private line services offerings regulated by modified alternative regulation. BAK requested that all of its long distance business service offerings be regulated pursuant to the procedures described and set out in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. It is BAK's intent by this request to have its long distance business services regulated in the same manner as this Commission has permitted for AT&T Communications of the Southern States. Alternative regulation has now been modified by this Commission through the re-imposition of rate caps with

regard to certain “operator assisted calls” where a customer uses a local exchange carrier’s calling card to complete calls from locations which have not selected that local exchange carrier as the toll provider. Order No. 2001-997, dated November 8, 2001, imposed a maximum cap of \$1.75 for operator surcharges for such calls, and a maximum cap of \$0.35 related to the flat per-minute rate associated with these calls.

According to the Application and Mr. Nolan's testimony, BAK seeks a waiver of 26 S.C. Code Regs. 103-610 of the Commission Rules and Regulations. BAK requests a waiver of 26 S.C. Code Regs. 103-610 (1976) so that it may maintain its records outside of South Carolina. Specifically, BAK seeks to maintain its books and records at its headquarters office in Santa Ana, California. Mr. Nolan indicated that BAK is aware of and agrees to abide by the Commission's regulation that requires that these records be made available for examination by the Commission at reasonable hours.

According to Mr. Nolan, BAK has never had authority denied in any state where it has applied for authority nor has BAK had authority revoked in any state where it has been granted authority. Additionally, BAK has never been the subject of an investigation nor been fined or sanctioned by a state or federal regulatory body. According to the testimony, BAK has not marketed its services in South Carolina prior to receiving certification. Finally, Mr. Nolan stated that BAK will abide by the Commission’s rules, regulations and Orders upon receiving certification to operate as a telecommunications provider in South Carolina.

After full consideration of the applicable law, BAK's Application, and the evidence presented at the hearing, the Commission hereby issues its Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. BAK is a limited liability company ("LLC") duly organized and existing under the laws of the State of California and has been authorized to do business in the State of South Carolina by the Secretary of State.
2. BAK is a provider of interexchange telecommunications services and wishes to provide its services in South Carolina.
3. BAK has the managerial, technical, and financial resources to provide the services as described in its application.
4. The Commission finds that BAK should be granted a waiver of 26 S.C. Code Regs. 103-610 requiring that reports and records be maintained within the State of South Carolina.
5. The Commission finds the acquisition or purchase of VVI's assets, including customer base, by BAK to be in the public interest.

CONCLUSIONS OF LAW

1. The Commission concludes that a Certificate of Public Convenience and Necessity should be, and hereby is, granted to BAK to provide intrastate interLATA service and to originate and terminate toll traffic within the same LATA, as set forth herein, through its own facilities and through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS),

directory assistance, travel card service or any other services authorized for resale by tariffs of carriers approved by the Commission.

2. The Commission adopts a rate design for the interexchange business service offerings of BAK consistent with the principles and procedures established for alternative regulation of long distance business service offerings set out in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C and modified by Order No. 2001-997. Following the modification of the alternative regulation by Commission Order No. 2001-997, this form of regulation is commonly referred to by the Commission, Staff, and others as “modified alternative regulation.”

Under the Commission approved modified alternative regulation, the business service offerings of BAK, including consumer card services, operator services and private line services, are subject to a relaxed regulatory scheme identical to that granted to AT&T Communications in Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. However, pursuant to Order No. 2001-997 issued in Docket No. 2000-407-C, this Commission has modified the previously approved alternative regulation by the re-imposition of rate caps with regard to certain “operator-assisted calls” where a customer uses a local exchange carrier’s calling card to complete calls from locations which have not selected that local exchange carrier as the toll provider. Order No. 2001-997, dated November 8, 2001, imposed a maximum cap of \$1.75 for operator surcharges for such calls, and a maximum cap of \$0.35 related to the flat per-minute rate associated with these calls. Under this relaxed regulatory scheme known as modified alternative regulation, tariff filings for business services shall be presumed valid upon filing. The

Commission will have seven (7) days in which to institute an investigation of any tariff filing. If the Commission institutes an investigation of a particular tariff filing within the seven days, the tariff filing will then be suspended until further Order of the Commission. Any relaxation in the future reporting requirements that may be adopted for AT&T shall apply to BAK also.

3. With regard to any residential interexchange service offerings of BAK, the Commission adopts a rate design that includes only maximum rate levels for each tariff charge. The Commission has previously adopted a rate structure incorporating maximum rate levels. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

4. With regard to residential interexchange service rates, BAK shall not adjust its residential interexchange service rates below the approved maximum levels without notice to the Commission and to the public. BAK shall file its proposed rate changes, publish notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances that do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16, 1993). Any proposed increase in the maximum rate level for residential interexchange services reflected in the tariff which would be applicable to the general body of BAK's subscribers shall

constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 2001).

5. If it has not already done so by the date of issuance of this Order, BAK shall file its revised interexchange tariffs and accompanying price lists within thirty (30) days of receipt of this Order. The revised tariffs shall be consistent with the findings of this Order, shall incorporate the changes suggested by the Staff and to which BAK agreed, and shall be consistent South Carolina law, including the Commission's Rules and Regulations.

6. BAK is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers should be treated similarly to facilities-based interexchange carriers.

7. With regard to BAK's interexchange service, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

8. BAK shall resell the services of only those interexchange carriers or LECs authorized by this Commission to provide telecommunications services within the State of South Carolina. If BAK changes underlying carriers, it shall notify the Commission in writing.

9. With regard to the origination and termination of toll calls within the same LATA, BAK shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX intraLATA dialing requirement, which has

been rendered obsolete by the toll dialing parity rules established by the FCC pursuant to the Telecommunications Act of 1996 (See, 47 CFR 51.209). Specifically, BAK shall comply with the imputation standard as adopted by Order No. 93-462 and more fully described in paragraph 4 of the Stipulation and Appendix B approved by Order No. 93-462.

10. BAK shall file surveillance reports on a calendar or fiscal year basis with the Commission as required by Order No. 88-178 in Docket No. 87-483-C. The annual report and the gross receipt filings will necessitate the filing of intrastate information. Therefore, BAK shall keep such financial records on an intrastate basis as needed to comply with the annual report and gross receipt filings. The form to be used in filing annual financial information with the Commission may be found at the Commission's website at www.psc.state.sc.us/forms/default.htm. The two-page form BAK is required to use in which to file the required information is entitled "Annual Information on South Carolina Operations for Interexchange Companies and AOS." Be advised that the Commission's annual report form requires the filing of intrastate revenues and intrastate expenses.

11. BAK shall, in compliance with Commission regulations, designate and maintain authorized utility representatives who are prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, BAK shall provide to the Commission in writing the names of the authorized representatives to be contacted in connection with general management duties as well as emergencies occurring during non-office hours.

BAK shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The form BAK is required to use by which to file the authorized utility representative information may be found at the Commission's website at www.psc.state.sc.us/forms/default.htm. This form is entitled "Authorized Utility Representative Information." Further, BAK shall promptly notify the Commission in writing if any representatives are replaced.

BAK shall also file with the Commission a copy of its general Bill Form as required by S.C. Code Regs. 103-612.2 and 103-622 (1976 and Supp. 2001).

12. BAK shall conduct its business in compliance with Commission decisions and Orders, both past and future.

13. With regard to BAK's requests for a waiver of the Commission's Rules and Regulations, BAK is hereby granted a waiver of 26 S.C. Code Regs. 103-610. As to BAK's request for a waiver of 26 S.C. Code Regs. 103-610 (1976) so that it may maintain its records outside of South Carolina, BAK is granted this waiver and may maintain its books and records at its headquarters office in Santa Ana, California, on the condition that these records be made available for examination by the Commission at reasonable hours if requested by the Commission.

14. Each telecommunications company certified in South Carolina is required to file annually the Intrastate State Universal Service Fund (USF) worksheet. This worksheet provides the Commission Staff with information required to determine each

telecommunications company's liability to the State USF fund. The Intrastate USF worksheet is due to be filed annually no later than August 15th.

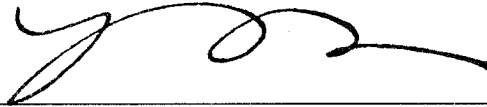
15. As a condition of offering prepaid interexchange services, the Commission requires BAK to post with the Commission either a bond in the form of a Certificate of Deposit in the amount of \$5,000 and drawn in the name of the Public Service Commission of South Carolina or a surety bond in the amount of \$5,000 which is payable to the Commission. The Certificate of Deposit shall be drawn on federal or state chartered banks or savings and loan associations which maintain an office in this state and whose accounts are insured by either the FDIC or the Federal Savings and Loan Insurance Corporation. A surety bond shall be issued by a duly licensed bonding or insurance company authorized to do business in South Carolina. This condition may be reviewed in one year.

16. The acquisition of assets, including the customer base, from VVI as requested by BAK, and which acquisition was approved by the United States Bankruptcy Court, Central District of California, is approved. BAK shall provide notification to the Commission upon completion of the acquisition and transfer.

17. BAK is directed to comply with all Rules and Regulations of the Commission, unless a regulation is specifically waived by the Commission.

18. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Mignon L. Clyburn, Chairman

ATTEST:



Gary E. Walsh, Executive Director

(SEAL)